MEMPHIS AND SHELBY COUNTY OFFICE OF PLANNING AND DEVELOPMENT

STAFF REPORT

#1.A.

CASE NUMBERS: ZTA 08-001CC L.U.C.B. MEETING: October 9, 2008

PROPOSED ZONING TEXT AMENDMENT:

Amend Appendix A, Zoning, Section 2 to add new definitions for financial Services, check cashing, title loan and pay day lender.

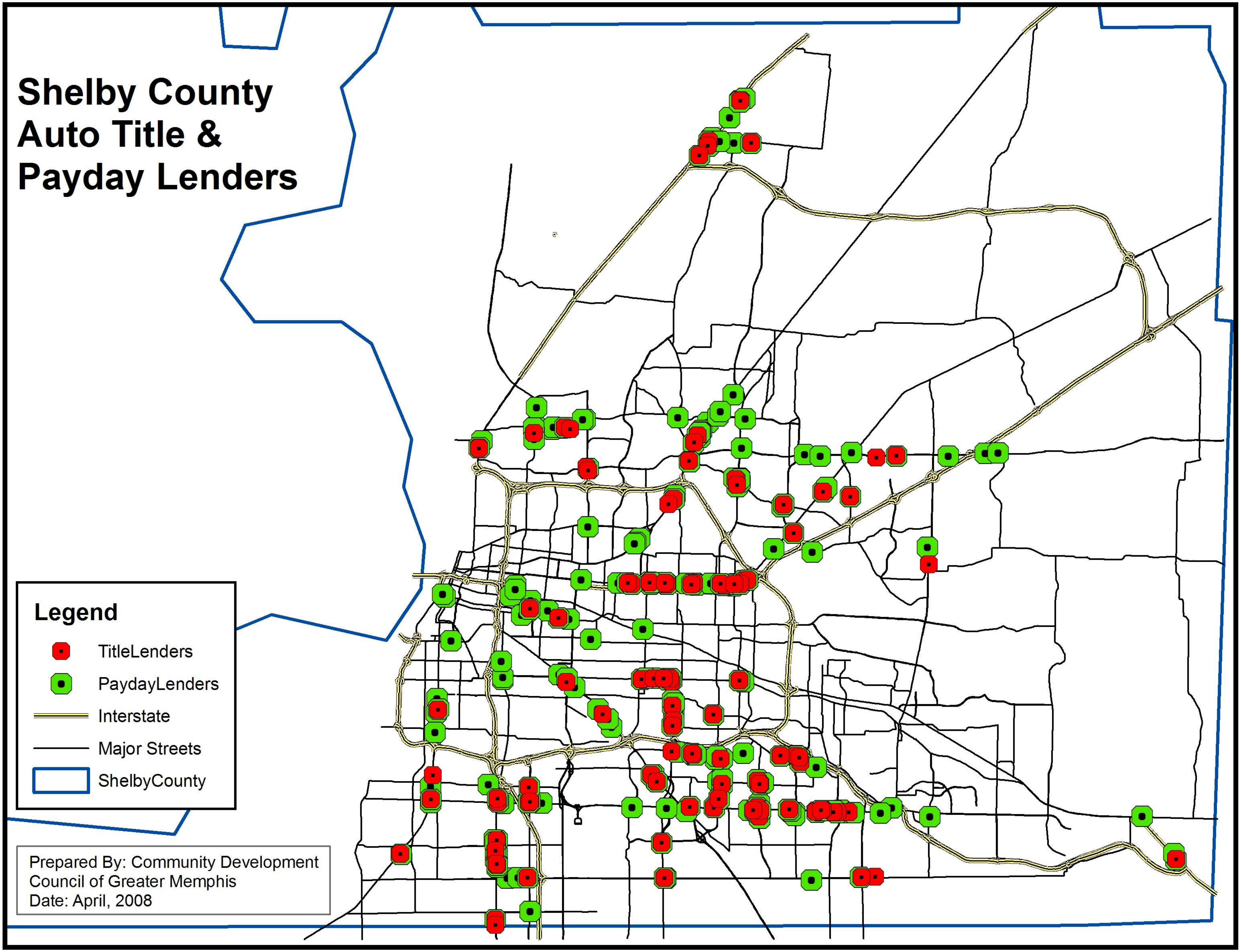
Amend Chart 1 by adding use standards for check cashing, pay day loan and title loan establishments.

COMMENTS:

The proposed text amendment is intended to minimize the deleterious effects that the clustering of short term payday loan and check cashing facilities have on the communities in which they locate. These uses add to the financial stresses on the residents of many communities which can be related to increased crime and declining property values. The business practices employed by these establishments are described in the attached article from the Texas Business Journal entitled "The Hidden Costs of Payday Lending."

The amendments will place appropriate standards on such uses and require them to be separated from protected land uses such as churches, public or private schools, parks, residential districts and other short term payday loan and check cashing facilities.

The locations of these short term loan businesses are shown on the attached map.


Shelby County
Auto Title &
Payday Lenders
Legend
TitleLenders
PaydayLenders
Interstate
Major Streets
ShelbyCounty
Prepared By: Community Development
Council of Greater Memphis
Date: April, 2008

The following list contains business robberies since January 1, 2008 through present that involve Title Loan or Check Cashing businesses:

Name of Business	Location	Date	Ward
1. 745 Cash	5353 Knight Arnold	8/4/2008	328
2. Ace America Ace Cash	3310 Jackson	9/20/2008	129
3. Check-n-Go	5065 American Way	7/26/2008	327
4. Family Check Advance	4271 Elvis Presley	6/13/2008	232
5. Golden Title Loans	4664 Summer	6/28/2008	527
6. Signature Finance	1920 Madison	6/4/2008	426
7. Tennessee Title Loans	4065 Jackson	4/14/2008	129
8. Title Max	3130 Austin Peay	7/22/2008	132

TEXAS

BUSINESS REVIEW

Bureau of Business Research • IC² Institute • The University of Texas at Austin

APRIL 2008

The Hidden Costs of Payday Lending

by
Don Baylor

Senior Policy Analyst

Center for Public Policy Priorities

Payday lending, *sometimes known as a* cash advance, *is a small, short-term, high interest loan that is intended to bridge the borrower's cash flow gap between pay periods. Payday loans are secured by access to the individual's checking account, typically through a postdated check or an automated clearinghouse (ACH) authorization. Available at storefronts and via the Internet, these loans are generally due in about two weeks or on the borrower's next payday.*

This article examines the nearly $3 billion payday industry in Texas and offers an overview of its practices and impact on Texas communities while raising questions about the need for more state oversight and safeguards.

As the subprime mortgage market implodes, the payday lending industry thrives unfettered in Texas, with more storefronts than McDonald's® and Whataburger® combined. This proliferation is possible because Texas payday lenders largely operate outside any state regulatory system, whereas the products and activities of banks and other financial institutions must meet public standards and safeguards.

This lack of oversight for the payday industry has led to the nation's highest interest rates, and spiraling consumer debt. Because the Texas Legislature has not monitored these institutions more closely or established reasonable rules, municipalities are beginning to take steps to rein in payday lending and protect their residents from financial abuse.

The Advent of Payday Lending

While short-term lending has existed for decades in the U.S., the modern version of payday lending initially appeared in the late 1980s and eventually morphed into a sizable industry during the 1990s. Several states, including Texas, have usury laws that typically limit interest rates to no more than 20% annually. Over time, states developed rules and strategies to regulate short-term loan operations, while lenders tested the limits of these state usury or check-cashing laws.

Until 2005, the most common business model to facilitate payday lending in Texas, and other states, was the so-called "rent-a-bank." Under this arrangement, payday firms partnered with out-of-state banks to "import" higher lending rates. These out-of-state banks – located in states without usury limits, such as Delaware or South Dakota – would provide the capital, while the payday lender assumed a "broker" role.

As the FDIC began to limit and eventually ban this practice, payday lenders actively pursued more industry-friendly legislation or forged alternative operating models.

How States Approach Payday Lending

States approach payday lending in one of three ways. Some allow payday lenders to operate with virtually no legal restrictions (e.g., Texas). Others enforce an interest rate cap at or around 36 percent on all small loans, which effectively eliminates traditional payday lenders. Meanwhile, a third group attempts to regulate payday lenders charging triple-digit interest rates with certain statutory limitations that seek to prevent lending abuse.

Interest rates and loan fees vary among states, and lenders usually charge the maximum allowed by state law. While the national average hovers around $16 per $100 borrowed, fees and interest charges on Texas payday loans range from $20-$25 per $100 borrowed. For a 10-day/$400 loan, a Texan could expect to pay about $100 in interest and fees, equating to a 925% APR.[1]

Despite these regulations – which include limits on loan fees and number of renewals – payday loans still create chronic and paralyzing debt and leave customers in a worse financial condition than prior to the original payday loan.

For states with a regulated model, many have also authorized data collection systems that both collect loan data and enforce the state's lending restrictions. Despite these regulations – which include limits on loan fees and the number of renewals – payday loans still create chronic and paralyzing debt and leave customers in a worse financial condition than prior to the original payday loan. Among the findings:

- 70 percent of all loans went to borrowers who had 11 or more loans in the past 12 months (Colorado);[2]
- The average payday loan customer took out 8 loans in a 12-month period (Florida);[3]
- The typical payday borrower repays $793 on a $325 loan (U.S.); and
- Only 1 in 100 payday borrowers pays the entire balance by the original due date.[4]

Largely because of these trends, along with countless anecdotal stories of spiraling consumer debt, federal and state action against payday lending practices has accelerated over the past few years. In addition to the FDIC ban outlawing the "rent-a-bank" model in 2005, the U.S. Congress enacted the Military Lending Act in 2006 to protect active duty military personnel from high-cost loans, especially payday lending.[5] The 36% rate cap – effective October 2007 – was promoted by the Department of Defense to improve troop morale and enhance national security, as military bases and families had been targeted by the industry for over a decade.[6] Since 2004, five states (plus Washington, D.C.) have enacted interest-rate caps that effectively remove payday loans from the financial marketplace. Table 1, below, highlights recent state initiatives, including annual interest rate caps and year of enactment.

Consumers in these states have not exactly petitioned for a return of payday loans. In a recent study, prepared for the North Carolina Commissioner of Banks after payday lenders exited the Tar Heel state, Carolina consumers reported that the absence of payday lending had a positive household effect, while they preferred other options to bridge financial shortfalls.[7]

Currently, payday lending occurs in 35 states, but several states, including Iowa and Arkansas, are taking dramatic steps to enforce their small loan laws and regulate payday lending.

Is Payday Lending Legal in Texas?

Beginning in July 2005, all major Texas-based payday lenders registered as Credit Service Organizations (CSOs). Before this shift, virtually all Texas payday lenders operated under the aforementioned "rent-a-bank" model. Under this now-defunct model, payday lenders claimed they were loan brokers or arrangers, thereby evading Texas usury laws and the short-term interest rates established by the Texas Finance Commission under Section 342 of the Texas Finance Code.[8] Table 2 (page 3) shows the rates established by the Texas Finance Commission – pursuant to state law – along with fees charged under the CSO model.

As defined under the Texas Credit Services Organization Act, a CSO is any entity or person that provides one of the following services:

- Improving a consumer's credit history or rating;
- Obtaining an extension of consumer credit for a consumer; or
- Providing advice or assistance to a consumer with regard to the previous two services.[9]

This broad criteria enables lending without standards, in which aspiring CSOs need only

Table 1
Recent Actions to Restrict Payday Lending, 2004 - 2008

State/Jurisdiction	Interest Rate Cap	Year of Enactment
Georgia	60%	2004
North Carolina	36%	2006
Oregon	36%	2007
Washington, D.C.	24%	2007
New Hampshire	36%	2008*

* At press time, the New Hampshire Governor had yet to sign the bill passed by the Legislature in February 2008.

Source: Center for Public Policy Priorities, 2008

Table 2
Comparison of Texas Office of Consumer Credit Commissioner (OCCC) Rates and Credit Service Organization (CSO) Fees for a 14-day Loan

Amount Borrowed	OCCC Finance Charges/APR	CSO Estmated Charges/APR
$300	$15.60/135.6%	$76.44/664.3%
$500	$19.33/100.8%	$127.40/664.3%
$700	$23.07/133.7%	$178.36/664.3%
$1,000	$28.67/199.3%	$254.29/664.3%

Source: Texas Finance Commission, CPPP Analysis, http://www.occc.state.tx.us/pages/int_rates/deferred%20presentment%20transaction%20rate%20charts%20.XLS.

Texas remains the only state in which such a permissive use of the CSO statute is the predominant model for payday loan transactions....

The result is that Texas payday loans remain the most expensive in the U.S.

complete a minimal application and remit a $100 annual fee. Although CSOs are required to register with the Secretary of State, they are not licensed by the Texas Office of Consumer Credit Commissioner (OCCC). Their fees and activities are unregulated by the state of Texas. Unlike other states with payday lending, the Texas CSO model has no maximum loan amount, although many lenders do not exceed $1,500 in loan value.

In substance, little has changed under the new model: payday lenders still offer the exorbitant loans they did under the rent-a-bank model. Only now, they do so in partnership with an unregulated third-party lender instead of an out-of-state bank.

Larger questions continue to surface about the overall legality of the CSO model given the original intent of the CSO Act. Texas law appears to preclude any and all attempts to dodge the intent of regulating payday loans, also known as "deferred presentment transactions." The Texas Finance Code makes it clear that the Finance Commission shall regulate these transactions, and that "[a] person who is a party to a deferred presentment transaction may not evade the application of this subtitle or a rule adopted under this subchapter by use of any device, subterfuge, or pretense. Characterization of a required fee as a purchase of a good or service in connection with a deferred presentment transaction is a device, subterfuge, or pretense."[10]

A Closer Look at the Texas Industry

The Texas payday lending industry is dominated by large companies. Of the approximately 2,000 payday-CSO storefronts across Texas, 92% are owned and operated by a half-dozen firms, many with headquarters in Texas: Ace Cash Express (Irving); Advance America (South Carolina); Cash America (Fort Worth); The Cash Store (Irving); First Cash/Cash & Go (Arlington); Check 'N Go (Ohio); EZMoney (Austin). The remaining payday lenders are independent, regional firms scattered across the state.[11]

Texas remains the only state in which such a permissive use of the CSO statute is the predominant model for payday loan transactions. Under this model, the payday-CSO storefront arranges a credit extension for a customer who pays a CSO fee for every $100 borrowed ($20-$25), while the CSO issues a letter of credit in conjunction with an affiliated third-party lender at 10% annual interest. Additional fees may be added. The result is that Texas payday loans remain the most expensive in the U.S.

From 2004-2007, OCCC fielded hundreds of complaints from consumers regarding payday lending. Neither the Attorney General nor OCCC resolved these complaints, primarily because state entities lack jurisdiction. In general, the Texas Attorney General has assumed a passive role in investigating customer abuse and confronting CSO statute manipulation. Complaints typically fall into three categories:[12]

Snowballing Debt

- (June 2006, Arlington): "She took out a payday loan Dec. 2005 for $500.00. She pays $170.00 in interest every two weeks since Jan. 2006, she got behind on her interest payments and... the Manager offered her [another] payday loan."
- (June 2007, Floresville): Customer "is in her 80's and has taken a payday loan. She has been renewing for a year. Each time she goes in to make payment, they offer her a [$50] premium to renew. The $100 loan has now increased to a $600 debt. [She] wants to put a stop to the renewals."

These accounts represent a slice of the personal and economic consequences wrought by a harmful combination of high-cost loans coupled with little state oversight and few consumer protections.

Harassment

- (January 2007, Irving): "She is getting harassing collections calls at work. She has asked them to stop and they continue to call her and have made her ill, she has been told that they are telling her boss about the problem and [are] going to make [her] lose her job."
- (September 2006, Dallas): "My Cash Time continues to contact her at work and harass her. [She] alleges that they call several times per day at work, calling her a 'liar and a thief.'"
- (August 2007, Arlington): "[She] alleges that they are making calls to her place of employment and going directly to her employer/supervisor . . . [and] have threatened to have [a] constable come to her place of employment and have her arrested."

Lender Misconduct

- (August 2006, Austin): [She] went in to make payments and she had to give two personal checks, when she went to fill them out she was asked by the employee to leave them blank and just sign them… After the check went through her bank she noticed that the checks were made out to the employee's name and not the company."
- (July 2006, Round Rock): "He had taken out a loan on 5/28/06, his payment was due in June, they were to take out only $125.00 for one month and instead they took out for the whole loan. He called the company and was told that they took out the full amount because they felt he was not going to pay the loan."

These accounts represent a slice of the personal and economic consequences wrought by a harmful combination of high-cost loans coupled with little state oversight and few consumer protections.

Calculating the Toll of Payday Lending

Despite the lack of a centralized data collection system to capture payday loan volume, total fees, and other indicators, the economic toll of payday lending is substantial, as product use continues to rise. Annually, Texans take out an estimated $2.5 billion in principal loan amounts per year and pay an additional $500-$600 million in annual interest and fees, not to mention the overdraft (NSF) fees that often accompany these payment arrangements.

Accordingly, a recent Brookings Institution study quantifies the costs of payday lending in Texas' largest cities. As shown below in Table 3, many communities (most often lower income neighborhoods) are saturated with alternative financial service providers such as payday lenders. Additionally, these costs represent a snapshot of the economic toll on Texas cities and neighborhoods.

With the lowest average credit scores in the U.S., ballooning mortgage payments, and relatively low wages, Texas households face numerous challenges in achieving and maintaining financial stability. According to estimates from the Center for Public Policy Priorities, the average Texas family cannot afford the short-term interest on a $300 payday

Table 3
The Impact of Payday Lending on Texas' Largest Cities, 2006

City	# of Payday Lenders	Payday Loan Value in Millions ($)	Payday Loan Fees in Millions ($)	Share of Alternative Financial Service Providers (%) in **Lower Income Neighborhoods** *
Austin	52	$90.8	$14.8	66.5%
Dallas	98	$171.2	$27.8	71.7%
El Paso	59	$103.1	$16.8	79.2%
Fort Worth	68	$118.8	$19.3	83.1%
Houston	237	$414.1	$67.3	76.2%
San Antonio	136	$237.6	$38.6	83.3%

* Alternative Financial Service Providers include check cashers, pawn shops, and payday lenders. The Brookings study divides neighborhoods into four income groups: low income, lower middle income, higher middle income, and high income. This figure includes the first two groups.

Source: Brookings Institution, 2008.

loan while maintaining essential household necessities (see Table 4, page 6). Many Texas communities, concerned with these trends, are taking steps to limit this damage to their economy and quality of life.

Cities Take Charge

In January 2008, Richardson became the first Texas city to adopt a municipal ordinance restricting the operations of so-called fringe financial services, including payday lenders, check cashers, and car-title lenders. City officials were concerned about the clustering of these businesses, along with their negative effects on property values and public safety. In February, the City of Mesquite followed suit by adopting an ordinance to restrict the existence and concentration of alternative financial establishments (AFE). Following a national trend – over 75 municipalities in 17 states have adopted similar ordinances – city leaders have concluded that such businesses harm citizens and local economic development efforts.[13]

Conclusion

The municipal movement reveals local discomfort with payday lenders in the face of state inaction. Will the state of Texas continue to leave communities and consumers to their own devices? Or will the Lone Star State remain true to its heritage as a staunch opponent of usury, as reflected in the state Constitution? To address this growing problem, the Legislature should consider tightening the CSO statute by establishing meaningful consumer safeguards and implementing a reporting requirement for payday lenders. As lessons from the mortgage crisis unfold, it is clear that standards and safeguards are critical to protect borrowers and promote economic growth.

In a recent interview with the *Dallas Morning News* about the anti-payday lending ordinance, Mesquite Mayor John Monaco noted, "If your business depends on people who are desperate, that speaks for itself. I don't look forward to seeing one more in Mesquite... They just don't do your community any good."[14]

References

1. Many supporters of payday lending contend that evaluating these products by the annual percentage rate is misguided. However, the main problem with payday loans is the short repayment period, reflected in the APR. As such, repaying a $400 loan in 10 days causes more financial disruption than repaying this loan over several months. APR is a function of principal, interest/fees, and time (or number of days).

2. Bell Policy Center, *The Truth About Payday Loans: How Hardworking Coloradans Take the Bait and Get Caught in a Cycle of Debt,* Feb. 2008.

3. Veritecs, *Florida Trends in Deferred Presentment,* August 2007. http://www.veritecs.com/FL_trends_aug_2007.pdf.

4. Center for Responsible Lending, *Financial Quicksand,* Nov. 2006. http://www.responsiblelending.org/pdfs/rr012-Financial_Quicksand-1106.pdf.

5. The MLA, as it has become to become called, was part of the FY 2007 John Warner Defense Authorization Act of 2007.

6. For more information on how payday lending has affected the armed services community, see Steven Graves & Christopher Peterson, *Predatory Lending and the Military,* March 2005, http://www.law.ufl.edu/faculty/publications/pdf/peterson_military.pdf. Also see U.S. Department of Defense, *Report on Predatory Lending Directed at Members of the Armed Forces and Their Dependents,* Aug. 9, 2006, http://www.defenselink.mil/pubs/pdfs/Report_to_Congress_final.pdf.

7. Center for Community Capital, *North Carolina Consumers After Payday Lending: Attitudes and Experiences with Credit Options,* Nov. 2007. http://www.ccc.unc.edu/documents/NC_After_Payday.pdf.

8. Although the CSO's broker fee is included for purposes of Truth in Lending disclosures, CSOs argue that for purposes of Texas law, the broker fee cannot be treated as interest, since the Texas Credit Services Organization Act (CSOA) has no explicit regulation of fees. This theory arises from a U.S. Fifth Circuit Court of Appeals opinion, in *Lovick vs. Rite Money*, which held that payments to a registered CSO loan broker could not be treated as interest. This ruling came despite repeated rulings by Texas courts prior to the passage of the CSOA that broker fees could be considered interest.

9. See Chapter 393, Texas Finance Code.

10. Texas Finance Code 342.008, Added by Acts 2001, 77th Leg., ch. 1235, § 13, eff. Sept. 1, 2001.

11. Texas Secretary of State, Credit Services Organization Database, Aug. 2007.

12. These complaint records were made available through the Center for Public Policy Priorities' Open Records Request to the OCCC, Sept. 2007.

13. Griffith, Kelly et. al., "Controlling the Growth of Payday Lending Through Local Ordinances and Resolutions," Washington: CFA, Nov. 2007. http://www.consumerfed.org/pdfs/PDL%20Local%20Ordinance%20Handbook%2012%2007%20Final.pdf.

14. Frank Trejo, "Mesquite Limits Payday Lenders," *Dallas Morning News,* Mar. 2, 2008. http://www.dallasnews.com/sharedcontent/dws/news/city/mesquite/stories/DN-payday_02eas.ART0.North.Edition1.466b224.html.

In January 2008, Richardson became the first Texas city to adopt a municipal ordinance restricting the operations of so-called fringe financial services, including payday lenders, check cashers, and car-title lenders. City officials were concerned about the clustering of these businesses, along with their negative effects on property values and public safety.

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Table 4

Why Payday Loans are Unaffordable for Texas Families

Basic Necessities for a Single-Parent/One-Child Family (San Antonio)

Income per two-week period	**$1,160**
Essential Household Expenditures per two-week period	
Food	-$124
Housing	-$358
Child Care	-$259
Medical/Health Care	-$87
Transportation	-$168
Taxes[1]	-$47
Other Necessities	-$115
Total (Essential) Expenditures	**-$1,158**
Amount Remaining	**$2**
Amount Due to Repay $300 Loan w/ typical fees	**-$365**
Pay Period Deficit	**<$363 >**

[1]Taxes include all federal taxes, along with yearly eligible tax credits such as the Earned Income Tax Credit and others.

Source: Center for Public Policy Priorities, Family Budget Estimator 2007

Announcement

For all current and back issues of Texas Business Review, visit and bookmark the website of the Bureau of Business Research (www.ic2.utexas.edu/bbr). The site features TBR issues and articles dating back to 1997 and contains an abundance of valuable information, articles, and data to help your business stay competitive. Much of the information is available free of charge as a service to the State of Texas. ◆

ORDINANCE NO. ______

JOINT ORDINANCE AMENDING THE MEMPHIS AND SHELBY COUNTY ZONING TO ESTABLISH PERMITTED LOCATIONS AND DISTANCE SEPARATION REQUIREMENTS FOR PAYDAY, CHECK CASHING AND TITLE LOAN ESTABLISHMENTS

WHEREAS, the existing City Code of Ordinances, Appendix A, Zoning does not specifically address payday, check cashing, cash advance or title loan establishments; and

WHEREAS, many cities have found that payday, check cashing, cash advance and title loan establishments have a deleterious effect on the entire community impacting economic development efforts, increasing crime and targeting the most vulnerable citizens;

WHEREAS, the Memphis City Council feels it necessary to address the concentration of these entities within the City of Memphis and assist some of the most distressed sections of the city; and

WHEREAS, it is deemed appropriate and in the best interest of the citizens to amend said Appendix A, Zoning to include permitted locations and separation requirements for payday, check cashing, cash advance or title loan establishments.

SECTION 1, NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Appendix A, Zoning, Section 2, is hereby amended by adding the following definitions:

Financial services: Any building, room, space or portion thereof where an establishment provides a variety of financial services, including generally, banks, credit unions, and mortgage companies.

Check cashing: Any building, room, space or portion thereof where checks are cashed in exchange for a fee greater than four percent of the check amount, as regulated by Title 45, Chapter 18, of the Tennessee Code Annotated. This definition shall not apply to those establishments that cash checks in exchange for purchase of merchandise.

Title loan: Any building, room, space or portion thereof where a business operates that makes loans in exchange for possession of the certificate of title to property or a security interest in titled property, as regulated by Title 45, Chapter 15, of the Tennessee Code Annotated.

Payday Lender: A person or entity that for compensation, engages in whole or in part, in the business of making loans in the principal amount of $1,000.00 or less for a short-term against the Borrower's future paycheck(s). The aforementioned definition excludes State or Federally chartered banks, savings associations, credit unions, or industrial loan companies offering direct deposit advance service to their customer that is incidental to their main purpose or business.

SECTION 2, BE IT FURTHER ORDAINED That Appendix A, Zoning, Chart 1. Uses Permitted in Zoning Districts is hereby amended by adding the uses depicted in Attachment A.

SECTION 3, BE IT FURTHER ORDAINED That Chart 1 is hereby amended by adding Footnote 24 to read as follows:

Use Standards for Check Cashing, Payday Loan and Title Loan Establishments

The governing bodies find that check cashing, payday loan, or title loan, establishment have a negative secondary effect on both the commercial and residential properties surrounding them, resulting in blight and the downgrading of property values, increased criminal activity, and contribute to depressed economic conditions in the community. <u>The following standards shall apply to all</u> check cashing payday lenders and title loan uses.

1. It shall be a violation of this development code for a person, corporation, or other legal entity to operate or cause to be operated any check cashing, payday loan, or title loan, establishment within one thousand (1,000) feet of:
    a. A duly organized and recognized place of worship;
    b. A public or private elementary or secondary school;
    c. A public or private day care facility or kindergarten;
    d. A boundary of a residential or landmark district; or
    e. Any other check cashing, payday loan, or title loan, establishment.
2. For the purpose of this section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest property line of the premise where the check cashing, payday loan, or title loan, establishment is located, to the nearest property line of the premises of a place of worship, public or private elementary or secondary school, public or private day care facility or kindergarten, any other check cashing, payday loan, or title loan, establishment, or to the nearest boundary of a residential district or local historic district.

SECTION 4. BE IT FURTHER ORDAINED, that the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases, or parts are held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

SECTION 5. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that this ordinance shall take effect from and after the date it shall have been passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of Mayor in writing by the comptroller and become effective as otherwise provided by law.

BILL MORRISON
Council Member

MYRON LOWERY
Council Chairman

Attest:
Patrice Thomas, Comptroller